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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 647/2014*, **

Communication submitted by:	C.Y. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	17 December 2014 (initial submission)
Date of present decision:	17 May 2018
Subject matter:	Deportation to China
Procedural issue:	Level of substantiation of claims
Substantive issues:	Risk of torture upon return to country of origin; non-refoulement
Article of the Convention:	3 (1) and (2)

1.1 The complainant is C.Y., a national of China born in 1978. At the time of submission of the complaint, he was being held in detention in Denmark, awaiting deportation to China following the rejection of his asylum application. He claims that his return to China would constitute a violation by Denmark of article 3 (1) of the Convention and that article 3 (2) of the Convention has been violated in connection with the consideration of his asylum case by the Danish authorities. The complainant is represented by counsel.

1.2 On 22 December 2014, pursuant to rule 114 of its rules of procedure, the Committee acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to China while his complaint was being considered. In accordance with the Committee's request, on 23 December 2014, the Refugee Appeals Board suspended the time limit for the complainant's departure from Denmark until further notice. On 9 November 2016, the Committee, acting through one of its Vice-Chairs, denied the State party's request of 19 June 2015 to lift the interim measures.

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Abdelwahab Hani, Claude Heller Rouassant, Ana Racu, Diego Rodriguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Jens Modvig and Honghong Zhang did not participate in the consideration of this communication.

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Factual background

2.1 The complainant is an ethnic Han from the village of Zaozhuang in Shandong, China. In 1998, he became a member of a Christian organization called the Church of the Almighty God.[1] That same year, while he was distributing flyers for the organization in the streets of Linyi City, the police took the flyers from him. When the complainant tried to take them back, the police officers started beating him, and he was hospitalized for about two months. Among other injuries, his left leg was broken in two places. One of the officers who had assaulted him visited him in hospital three times and warned him not to tell anyone about the violent incident.[2] After he was discharged from hospital, the complainant distributed flyers secretly a few times for the Church of the Almighty God. Shortly after the violent incident in 1998, he was blacklisted by the Chinese authorities and his civil registration number was deleted from their systems. Moreover, he was dismissed from his job in Linyi City, where he worked in public relations for the Agricultural Technology Promotion Centre.

2.2 From 1998 to 2010, the complainant attended the Church of the Almighty God church services. In 2007, the police closed the Church premises, and subsequently he and the other members started gathering at each other's homes for church services. In May 2010, the complainant was arrested by the police while he was at the home of one of the leaders of the organization. He was imprisoned for about 18 months and placed together with criminals, who, along with prison guards, regularly subjected him to beatings. As a result, he attempted suicide several times. In late 2011, the complainant was beaten so violently by the other inmates that he passed out and was hospitalized for a month and a half. During this period, he was in a coma for approximately a week. The complainant's father became angry about the fact that, since his son did not have a civil registration number, his son had to pay for his medical treatment himself. His father complained about that to the local government and was then imprisoned himself. Upon his discharge from hospital, the complainant was not returned to prison as he had to recover from his injuries. As of April 2013, he had to report to the police every 15 days about whether he was still meeting with members of the Church of the Almighty God. In February 2014, the complainant learned that the police wanted to start arresting members of the organization again, so he decided to leave China. He left the country illegally.

2.3 The complainant entered Denmark on 19 or 20 June 2014 without valid travel documents.[3] On 24 June 2014, he applied for asylum. As his grounds for asylum, the complainant referred to his fear of being arrested by the authorities in case of his return to China because of his religious conviction and membership of the Church of the Almighty God, which is considered a sect in China. On 25 August 2014, the Danish Immigration Service conducted the complainant's asylum screening interview. His first and second substantive interviews were conducted by the Immigration Service on 2 September 2014 and 13 October 2014, respectively.

2.4 On 21 October 2014, the Immigration Service refused the complainant's application for residence under section 7 of the Aliens Act. On 9 December 2014, the Board upheld the refusal by the Immigration Service of the complainant's asylum application.

The complaint

3.1 The complainant submits that his return to China would constitute a violation by Denmark of article 3 (1) of the Convention, and that article 3 (2) of the Convention has been violated in connection with the consideration of his asylum case by the Danish authorities. He argues, in particular, that the Refugee Appeals Board should have examined him for signs of torture and that, in its assessment of evidence, the Board did not apply the principle of the benefit of the doubt normally applied to asylum seekers, which is especially relevant in cases involving victims of torture.

[1] Also known simply as "Almighty God".

[2] The police officer's name is available on file.

[3] The complainant travelled by boat, thinking that he was going to the United States of America. When he first arrived, he did not know which country he was in.

3.2 The complainant submits that his case is identical to those of *Amini v. Denmark* and *K.H. v. Denmark*, in which the Committee found a violation of article 3 of the Convention because the State party rejected the complainants' requests to carry out a medical examination in order to determine whether they had been tortured.[4] He indicates that in *K.H. v. Denmark*, the State party's failure to protect K.H. from refoulement had dramatic consequences, as he was subjected to torture and inhuman treatment after being deported to his country of origin. Owing to the atrocities he suffered in Afghanistan, K.H. was expeditiously granted asylum by the Immigration Service upon his return to Denmark. No examination for signs of torture was carried out as part of that asylum application process, since there was no longer any need for such an examination.

3.3 The complainant claims that, if he is returned to China, he will be interviewed by the police and subjected to torture on his arrival at the airport due to the visible scars on both of his legs, one of his arms and his head.[5] He adds that he has no travel documents and left China illegally. The complainant therefore submits that his return to China would constitute a violation of article 3 of the Convention by Denmark since, in addition to its decision not to examine him for signs of torture, the Board did not substantiate in its decision why it believed that the complainant should not fear being subjected to torture upon his return to China. He notes that the situation in China has worsened since he left in 2014.[6]

State party's observations on admissibility and the merits

4.1 On 19 June 2015, the State party submitted its observations on admissibility and the merits of the complaint. As to the facts on which the present complaint is based, it refers to the complainant's statements during the asylum proceedings and recalls that he has not been a member of any political associations or organizations, nor has he been politically active in any other way.

4.2 With reference to rule 113 of the Committee's rules of procedure, the State party submits that the complainant has failed to establish a prima facie case for the purpose of admissibility of his complaint under article 3 of the Convention, insofar as it has not been established that there are substantial grounds for believing that he is in danger of being subjected to torture if returned to China. The complaint is therefore inadmissible as manifestly unfounded. Should the Committee find the complaint admissible, the State party submits that the complainant has not sufficiently established that returning him to China would constitute a violation of article 3 of the Convention. In this connection, it observes that the complainant has not provided the Committee with any new information on his conflicts in China beyond the information already available to the Refugee Appeals Board when it made its decision on 9 December 2014.

4.3 The State party provides a detailed description of the asylum proceedings under the Aliens Act and the decision-making processes and functioning of the Board.[7] It observes that the Board made an assessment in the complainant's case, as it does in all other asylum cases, as to whether his statements appeared credible and convincing, including their probability, coherence and consistence. In its decision of 9 December 2014, the Board found that it could not consider the complainant's statements on his grounds for asylum to be established facts, because his statement appeared inconsistent and incoherent. It emphasized, inter alia, that the complainant had: (a) made inconsistent statements on his

[4] See *Amini v. Denmark* (CAT/C/45/D/339/2008) and *K.H. v. Denmark* (CAT/C/49/D/464/2011).

[5] The complainant provides two photographs of the scars on his legs and a copy of a medical record dated 14 November 2014 from Copenhagen Prisons, an institution under the Prison and Probation Service, stating that he "has been beaten by other inmates in prison in China where no staff interfered. Was struck on the head and especially the right knee was injured, resulting in the need for an operation in China. Had removed some bones and has since had pain. Nothing urgent. Has an approximately 10 cm large scar on the inside of his knee. No sign of infection. There are also scars on the left leg and marks suggesting cigarette burns on left shin".

[6] Reference is made to the following articles: AFP in Beijing, "Beijing arrests nearly 1,000 members of Christian sect accused of brainwashing", *Guardian*, 19 August 2014; and Matt Schiavenza, "China cracks down on 'Almighty God' apocalyptic cult, arrests 1,000", *International Business Times*, 19 August 2014.

[7] See *M.B. et al. v. Denmark* (CAT/C/59/D/634/2014), paras. 4.2–4.8.

employment as an agricultural technician; [8] (b) displayed little knowledge of the circumstances of the Church of the Almighty God; [9] (c) been unable to provide any information on the mass arrests of members of the Church of the Almighty God that took place in 2012 according to the background information; and (d) made inconsistent statements on when he was hospitalized.[10] Against that background, the Board found that the complainant had failed to substantiate that he had been persecuted by the Chinese authorities due to his religious persuasion. The State party submits that it agrees with the Board's assessment of the complainant's credibility. Thus, the State party cannot consider the complainant's statements on his grounds for asylum or his claims to have carried out religious activities for the Church of the Almighty God to be established facts. Accordingly, the complainant appears to be a very low-profile individual for the Chinese authorities.

4.4 As to the complainant's claim that the Board should have examined him for signs of torture, the State party submits that there was no need in the present case to conduct such an examination because the Board did not consider the complainant's statements on his conflicts in China to be established facts. The State party recalls in this respect that the Board does not initiate examinations for signs of torture in cases in which the Board has been unable to find as an established fact the complainant's grounds for asylum. Likewise, the Board will not initiate an examination if it considers it an established fact or a possibility that the complainant has previously been subjected to torture, but finds that, upon a specific assessment of the complainant's situation, the complainant will be at no real risk of torture if returned at that time.

4.5 It appears from the decision of 9 December 2014 that the Board explicitly considered the complainant's information on the alleged assaults against him. Therefore, it appears directly from that decision that, based on the medical information produced by the assigned counsel in conjunction with the complainant's own statements and his presentation of marks on his right knee after surgical stitches and marks on his left leg and left arm, the Board considered it an established fact that he had sustained physical injuries. However, the Board found that, due to his inconsistent and incoherent statements, the complainant had failed to substantiate the existence of any connection between his physical injuries and his alleged affiliation with the Church of the Almighty God. The State party adds that it agrees with the Board's finding and notes that the present complaint does not include any information that gives the State party a reason to change the assessment of the injuries mentioned by the complainant. It observes in this respect that an examination for signs of torture cannot in itself substantiate the complainant's statement on how he has sustained the physical injuries to which he has referred. The State party submits that, in his complaint to the Committee, the complainant failed in any way to give an account as to how or why an examination for signs of torture might lead to a different assessment of his asylum application. Accordingly, it finds that the complainant does not have any right to an examination for signs of torture.

4.6 Regarding the complainant's reference to *Amini v. Denmark*, the State party indicates that it is differs considerably from the present case, as in that case the complainant provided objective evidence that he had been subjected to torture in his country of origin immediately before his arrival in Denmark. He also demonstrated that he would face a

[8] In particular, the complainant has made inconsistent statements about when he started working as an agricultural technician relative to the time when he was fired allegedly due to his religious persuasion, and he has also made inconsistent statements about when he was dismissed from his job.

[9] According to the background information available on the organization, the Church of the Almighty God was considered a cult and was already illegal in China in 1995, its members believed that Judgment Day would occur on 21 December 2012 and that Jesus had returned to the earth in the form of a Chinese woman. Reference is made, inter alia, to: United States Department of State, "2012 report on international religious freedom: China", 20 May 2013; and Immigration and Refugee Board of Canada, "China: religious texts used by the Church of the Almighty God (Eastern Lightning)", 14 October 2014.

[10] In particular, at the Board hearing, the complainant stated that he was hospitalized in 2012 and therefore had no knowledge of the mass arrests in 2012, whereas when interviewed by the Danish Immigration Service, he stated that he was hospitalized in 2011 after having been severely beaten by fellow inmates.

personal risk of being subjected to torture again if returned to his country of origin. As regards the complainant's allegation that his case is similar to *K.H. v. Denmark*, the State party indicates that, in that case, the Board considered the complainant's statements on his conflicts with the Taliban to be established facts.[11]

4.7 The State party submits that the complainant's assertion that the Board failed to explain why he should not fear being subjected to torture upon his return to China is incorrect. The Board's decision of 9 December 2014 clearly indicates that the complainant's statements on his conflicts arising from his religious persuasion, including his claim that he had previously been tortured as a direct consequence of it, could not be considered as established facts. The Board therefore explicitly considered the complainant's information on the alleged assaults against him and in so doing, also explained why he should not fear being subjected to torture upon his return to China. Furthermore, the Board observed that the fact that the complainant left China illegally did not independently form a basis for asylum, as possible punishment for illegal departure cannot be considered to be in conflict with Danish legal tradition.

4.8 Moreover, the State party maintains that the Board took into account all relevant information in its decision of 9 December 2014 and that the complainant has not presented any new information to the Committee. The State party refers to the judgment of the European Court of Human Rights in *R.C. v. Sweden*, in which the Court considered that "as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned".[12] The State party considers that the complainant is trying to use the Committee as an appellate body and that his complaint merely reflects the fact that he disagrees with the assessment of his credibility made by the Board. It also indicates that the complainant failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. The State party refers to the Committee's jurisprudence according to which it is for States parties to examine the facts and evidence in a particular case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice.[13] Thus, in the State party's view there is no basis for doubting, let alone setting aside, the Board's assessment, according to which the complainant has failed to establish that there are substantial grounds for believing that he would risk abuse contrary to article 3 of the Convention if he were returned to China.

4.9 The State party observes that the complainant's claim that if he were returned to China, the Chinese police would consider him a person of interest on his arrival at the airport due to the scars on his head and his body, appears completely unsubstantiated.

Complainant's comments on the State party's observations

5.1 On 29 February 2016, the complainant provided his comments on the State party's observations. He considers that the State party has failed to demonstrate that his complaint is "manifestly unfounded" and, therefore, it should be declared admissible. He maintains that his argument is closely linked to the merits of the complaint and that, therefore, the complaint should be examined by the Committee on the merits. As to the merits, the complainant maintains that it has been demonstrated that the State party has violated article 3 of the Convention, in particular because his request to have a medical examination to determine whether he was subjected to torture before arriving in Denmark was rejected by the State party's authorities.

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[11] Reference is made to European Court of Human Rights, *Cruz Varas and others v. Sweden* (application No. 15576/89), judgment of 20 March 1991, paras. 77–82; and *M.O. v. Denmark* (CAT/C/31/D/209/2002), paras. 6.4–6.6.

[12] See European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52. The State party also refers to the European Court of Human Rights, *M.S. v. Denmark* (application No. 58363/10), judgment of 8 July 2014, para. 63; and *M.E. v. Sweden* (application No. 71398/12), judgment of 26 June 2014, para. 78.

[13] See *A.K. v. Australia* (CAT/C/32/D/148/1999), para. 6.4; and *S.P.A. v. Canada* (CAT/C/37/D/282/2005), para. 7.6.

5.2 The complainant submits that, on 2ember 2015, his counsel requested the Board to reopen the consideration of his asylum case based on a 10 November 2015 report of the Amnesty International Danish Medical Group, which fully confirmed, in his view, the complainant's statements to the Danish asylum authorities. On 26 February 2016, the Board acknowledged receipt of counsel's request and informed him that it could take 8 to 10 months to consider whether the complainant's asylum case was going to be reopened.

5.3 The complainant reiterates that his complaint is identical to the case of *K.H. v. Denmark*, in which the complainant was denied a medical examination. In that case, following the Committee's decision, the complainant had to be readmitted to Denmark, having been deported, and was granted refugee status. He also reiterates that his complaint is very similar to that of *Amini v. Denmark*.[14] The complainant also refers to the Committee's decision in *F.K. v. Denmark*, in which it considered that, by rejecting the complainant's asylum application without ordering a medical examination, the State party had failed to sufficiently investigate whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if he was returned to his country of origin.[15]

5.4 Regarding the State party's reference to the European Court's judgment in *R.C. v. Sweden*, the complainant indicates that, in that case, the Court disagreed with the State party's conclusion, as it found that the applicant's story was consistent throughout the proceedings and that, while there were some uncertain aspects, they did not undermine the overall credibility of his story. The Court declared that article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms would be violated if the applicant were deported to his country of origin. The complainant maintains that the Court found a violation in that case because the Swedish authorities should have ordered that a medical examination be carried out to establish the probable cause of the applicant's scars, taking into account the fact that he had made a prima facie case as to their origin.[16]

5.5 The complainant recalls the State party's assertion that there was no need for the Board to request that he be examined for signs of torture before taking a final decision on his asylum application, since he had "failed to substantiate the existence of any connection between his physical injuries and his alleged affiliation with the Church of the Almighty God". He refers in this regard to the report of the Amnesty International Danish Medical Group, according to which the complainant, inter alia, "has suffered physical injuries in the form of hearing loss in the right ear and pain in the right knee and lower leg. Objective findings show scars on the skin, which are fully consistent with the stated surgical treatments and consequences of blows and kicks suffered by the complainant during his detentions and imprisonment according to his own account. Emotional symptoms such as anxiety, reliving of experiences, nightmares, concentration difficulties and memory impairment have been identified". It further appears from the report that "overall, the complainant's physical and emotional injuries are fully consistent with his account of torture". The complainant claims, therefore, that by denying him the opportunity to undergo a medical examination, based solely on his credibility and his alleged failure to establish a connection between his religious activities for the Church of the Almighty God and his physical injuries, the State party violated the procedural aspects of article 3 of the Convention. This is confirmed, in the complainant's view, by the fact that when he submitted his asylum application, the Immigration Service did not even ask him to fill in the consent form for a medical examination.

5.6 The complainant also argues that the Board did not respect the principle of the benefit of the doubt in his case and applied a wrong standard of proof, since it is not possible to obtain a medical certificate indicating that a person has been tortured because of his or her activities. Application of the principle of the benefit of the doubt and the opportunity to undergo a medical examination to confirm that torture had taken place were essential in his case.[17] The complainant indicates that the State party's authorities

[14] See *Amini v. Denmark*, paras. 9.8–9.9.

[15] See *F.K. v. Denmark* (CAT/C/56/D/580/2014), para. 7.6.

[16] See European Court of Human Rights, *R.C. v. Sweden*, para. 53.

[17] Reference is made to *F.K. v. Denmark*, para. 7.6.

authorized this kind of medical examination in only two cases in 2015. He claims that, taking into account that in 2015, the number of asylum applications was very high, it is questionable that the authorities should only have found it necessary to carry out medical examinations in such a limited number of cases.[18]

5.7 The complainant adds that he did explain to the Danish asylum authorities that he was at home in 2012 because he was recovering from the torture to which he had been subjected earlier and was thus luckily not affected by the round-up of 500 members of the Church of the Almighty God by the Chinese authorities. In 2014, however, the Chinese authorities arrested 1,000 members of the organization and the complainant feared that he would be next. The complainant also notes with regret that, since the Board found some of his statements "inconsistent and incoherent", it did not allow the medical examination for signs of torture to be carried out and failed to take into account other information provided by him in support of his claims.

5.8 The complainant indicates that, according to a new bill brought before Parliament amending the Acts on Legal Aid and the Administration of Justice in respect of lodging and pursuing complaints with the international complaints bodies set up under human rights conventions, cases like his are excluded from legal aid. According to the bill, when the Board decides not to authorize a medical examination, this cannot be invoked as a ground to submit a complaint to the Committee.

Additional submissions by the parties

6. On 15 December 2016, the State party requested the Committee to suspend until further notice its consideration of the present complaint, since the Board had decided, on 12 December 2016, to reopen the complainant's case for an oral hearing before a new panel. That decision was taken pursuant to counsel's request of 28 December 2015.

7. On 14 March 2017, the complainant informed the Committee that, on 17 February 2017, the Board upheld its decision of 9 December 2014, thus again refusing his asylum application. He submits that, despite the conclusions of the Amnesty International Danish Medical Group that the complainant's "physical and emotional injuries are fully consistent with his account of torture", the Board stated, inter alia, that "it could not be concluded on the basis of the medical examination conducted that the injuries can be attributed to his alleged affiliation with Almighty God". Therefore, the Board "found no reason to request the Department of Forensic Medicine to initiate a full examination for signs of torture". On an overall assessment, the Board found that the complainant had failed to render it probable that, in case of his return to China, he would risk persecution justifying asylum under section 7 (1) of the Aliens Act or would be at a real risk of abuse falling within section 7 (2) of that Act.

8.1 On 29 March 2017, the State party transmitted to the Committee an English translation of the Board's decision of 17 February 2017, indicating that the complainant stated to the Board, inter alia, that he had not had contact with the Church of the Almighty God since his departure from China. He had been baptised in Denmark and was learning about Christianity. He no longer considered himself a member of the Church of the Almighty God. He wanted to be a true Christian, as Christianity and the Church of the Almighty God were different. He could not simply explain that to the Chinese authorities, because once registered as a member of the Church of the Almighty God, you would always be a member.

8.2 The Board's decision also indicates that, in the light of the conclusions reached by the Amnesty International Danish Medical Group in its report of 10 November 2015, the Board accepted as an established fact that the complainant has suffered the reported injuries. However, it could not conclude, on the basis of the medical examination conducted, that the injuries could be attributed to his alleged affiliation with the Church of the Almighty God. Therefore, the Board found no reason to request the Department of Forensic Medicine to initiate the complainant's full examination for signs of torture, in which the same findings would be made (see para. 7 above).

[18] The complainant does not provide further information on this matter.

8.3 In its assessment of the account given by the complainant, the Board took into consideration the fact that he had been subjected to torture or similar abuse, as it could not be expected in that situation that the complainant could give a very precise and coherent account of all the details of the case. However, even in those circumstances, the Board could not accept as an established fact the complainant's account of his grounds for asylum. In making that assessment, the Board emphasized that the complainant made inconsistent and incoherent statements on several crucial points. Furthermore, during an oral hearing on 17 February 2017, the complainant made inconsistent statements to the Board about his father's funding of the complainants' journey from China.[19] The complainant made further inconsistent statements about his father's work, including concerning the time of his father's retirement.[20] The Board emphasized the fact that the complainant made inconsistent statements about the time when the Church of the Almighty God was prohibited by the authorities of China, as well as about the female supreme leader of the organization.[21]

8.4 On 16 June 2017, the State party indicated that the complainant's submission of 14 March 2017 did not give rise to any further comments on its part. It maintains, therefore, that the complaint is manifestly unfounded and should be declared inadmissible. Should the Committee find the complaint admissible, the State party maintains that the return of the complainant to China would not constitute a violation of article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

9.3 The State party maintains that the complaint should be declared inadmissible, pursuant to rule 113 of the Committee's rules of procedure, as it is manifestly unfounded. However, the Committee observes that the complainant has sufficiently detailed the facts and the basis of his claims of violations of the Convention, and thus considers that the complaint has been sufficiently substantiated for the purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its consideration of the merits.

[19] In particular, at the Board hearing of 9 December 2014, the complainant stated, inter alia, that his father had spent his savings, whereas he stated to the Board on 17 February 2017 that his father partly used the savings he had and partly borrowed money from friends and acquaintances. The Board observed in this connection that the complainant's statement that his father could not afford to pay for the complainant's hospitalization did not seem consistent with the assertion that his father could raise $15,000 for the complainant's journey.

[20] In particular, when interviewed by the Immigration Service on 25 August 2014, the complainant stated that his father had received information at his workplace in February 2014 that the Government wanted to imprison members of the Church of the Almighty God again. When reminded of his statement to the Board that his father retired before 1998, the complainant responded that his father had just visited his old workplace in 2014.

[21] In particular, when interviewed by the Immigration Service, the complainant could not give the name of the female leader, whereas he disclosed her name to the Board on 17 December 2017. When this was pointed out to the complainant, he responded that he had not dared to give the name of the leader when interviewed by the Immigration Service. The Board noted in this regard that the complainant gave the name of the male leader of the organization when interviewed by the Immigration Service.

Consideration of the merits

10.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

10.2 In the present case, the issue before the Committee is whether the return of the complainant to China would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to China. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[22]

10.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group that may be at risk of being tortured in the State of destination. The Committee's practice in this context has been to determine that substantial grounds exist whenever the risk of torture is foreseeable, personal, present and real.[23] Indications of personal risk may include, but are not limited to: the complainant's ethnic background; previous torture; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; clandestine escape from the country of origin as a result of threats of torture; and religious affiliation and violations of the right to freedom of thought, conscience and religion.[24] The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[25]

10.5 In assessing the risk of torture in the present complaint, the Committee notes the complainant's contention that he fears being arrested by the authorities in case of his return to China because of his religious conviction and membership of the Church of the Almighty God, which is considered a sect in China. The Committee also notes the complainant's claim that, if he is returned to China, he will be interviewed by the police and subjected to torture on arrival at the airport due to the visible scars on both of his legs, one of his arms and his head, resulting from the torture and ill-treatment to which he was subjected in his country of origin prior to his arrival in Denmark. In this regard, the Committee further notes the complainant's allegations that he sustained those injuries in 1998 when he was beaten up by the police for distributing flyers for the Church of the Almighty God and then during his imprisonment between May 2010 and April 2013 for his involvement in the activities of the Church of the Almighty God, when he was regularly subjected to beatings by prison guards and inmates. The Committee notes the complainant's assertion that he has no travel documents and that he left China illegally.

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[22] See *T.M. v. Republic of Korea* (CAT/C/53/D/519/2012), para. 9.3.

[23] See general comment No. 4, para. 11.

[24] Ib: 1., para. 45.

[25] Ibid., para. 50.

10.6 The Committee also notes the State party's observation that its domestic authorities found that the complainant lacked credibility because, inter alia: (a) he had made inconsistent statements on his employment as an agricultural technician; (b) he had displayed little knowledge of the circumstances of the Church of the Almighty God; (c) he had been unable to provide any information on the mass arrests of members of the Church of the Almighty God that took place in 2012 according to the background information; (d) he had made inconsistent statements on when he was hospitalized; (e) he had made inconsistent statements concerning his father's funding of the journey from China; (f) he had made inconsistent statements about his father's work, including about the year of his father's retirement; and (g) he had made inconsistent statements about when the Church of the Almighty God was prohibited by the authorities in China, and about the female supreme leader of the organization. Against that background, the Board found that the complainant had failed to substantiate that he had been persecuted by the Chinese authorities due to his religious persuasion.

10.7 The Committee also takes note of the complainant's claim that, although he showed the Board the visible scars on both of his legs, one of his arms and his head, and demanded that the Board request a specialized medical examination in order to verify whether those injuries were sustained as a result of torture, the Board rejected his request for asylum on two occasions without ordering such an examination and despite the report of the Amnesty International Danish Medical Group, which attested that "overall, the complainant's physical and emotional injuries are fully consistent with his accounts of torture". It also notes the State party's argument that the Board accepted as an established fact that the complainant had suffered the reported injuries. However, it could not conclude, on the basis of the medical examination conducted by the Amnesty International Danish Medical Group, that the injuries could be attributed to his alleged affiliation with the Church of the Almighty God. Therefore, the Board found no reason to request the Department of Forensic Medicine to initiate the complainant's full examination for signs of torture, in which the same findings would be made. Furthermore, the complainant's examination for signs of torture cannot in itself substantiate his statement on how he sustained the reported physical injuries.

10.8 In this regard, the Committee observes that, in principle and regardless of the asylum authorities' assessment of the credibility of a person alleging previous torture, he or she should be referred by the asylum authorities to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol),[26] so that the authorities deciding on a given case of forcible return are able to complete the assessment of the risk of torture objectively and without any reasonable doubt, on the basis of the results of that medical examination. The Committee observes, however, that both in the present complaint and in his submissions to the Danish asylum authorities, the complainant has failed to explain how or why an examination for signs of torture by the Department of Forensic Medicine might have led to a different assessment of his asylum application.

10.9 The Committee also observes that, even if it were to set aside the inconsistencies in the complainant's account of his past experiences in China and accept his statements as true, the complainant has not provided any evidence that the Chinese authorities have been looking for him in the recent past or were otherwise interested in him. The Committee recalls in this connection that ill-treatment suffered in the past is only one element to be taken into account, the relevant question before the Committee being whether the complainant currently runs a risk of torture if returned to China.[27] The Committee considers that, even if it were assumed that the complainant was tortured by or with the acquiescence of the Chinese authorities in the past, it does not automatically follow that he would still be at risk of being subjected to torture if presently returned to China. While noting that there are reports of serious human rights violations in China against members of the Church of

[26] Ibid., para. 18 (d).

[27] See, e.g., *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), para. 11.2; *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7; and *S.S.B. v. Denmark* (CAT/C/60/D/602/2014), para. 8.7.

the Almighty God, especially those who hold a prominent position in the organization, the Committee observes that it transpires from the complainant's statements to the Board on 17 February 2017 that he has not had contact with the Church of the Almighty God since his departure from China, that he no longer considers himself a member of the Almighty, and was baptised in a Christian church in Denmark.

10.10 The Committee recalls that the burden of proof is upon the author of the complaint who has to present an arguable case, that is, to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real, unless the complainant is in a situation where he or she cannot elaborate on his or her case.[28] In the light of the above considerations, and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in China, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to China at present would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

11. Accordingly, the Committee, acting under article 22 (7) of the Convention, is of the view that the return of the complainant to China would not constitute a violation of article 3 (1) of the Convention and that there was equally no violation by the State party of its obligations under article 3 (2) of the Convention in the consideration of the complainant's asylum application.

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[28] See general comment No. 4, para. 38.